* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 914 of 2006**

% Judgment reserved on: 1st March, 2007

Judgment delivered on: 12th March, 2007

COMMISSIONER OF INCOME TAX
Delhi-XVII. ..... Appellant
Through: Mr.R.D.Jolly, Adv.

Vs.

M/S REEBOK INDIA COMPANY
328-I, Village Bijwasan,
New Delhi-110061 ..... Respondent
Through: Mr.P.N.Monga with
Mr.Manu Monga, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

Present appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as Act) against the order dated 2nd September,

2005 passed by the Income Tax Appellate Tribunal, Delhi in ITA(TDS) No.5/Del/2002 for the assessment year 1994-95.

2. The following substantial question of law has been framed by us for consideration:-

> "Whether the Income Tax Appellate Tribunal was correct in law in holding that the amount of Rs.1,50,24,000/- (termed as security deposit) paid by the Assessee to its landlord under the Agreement to Lease dated 10th March, 1995 was not 'rent' as defined in the Explanation to Section 194-I of the Income Tax Act, 1961?"

3. The brief facts of this case are that the Assessee-company entered into an agreement with M/s ABCO Footwear Care to take on lease the premises bearing No.328/1, Village Bijwasan, New Delhi at a monthly rent of Rs.6,26,000/-. The lease agreement also provided for payment of security deposit amounting to Rs.1,50,24,000/- which was to be reduced every six months by an amount of rent which became payable in accordance with the agreement. The Assessee deducted tax at source under Section 194-I of the Act, on the actual payment of rent made by it.

4. The Assessing Officer vide his order dated 16th

March, 2000 held that the amount of security deposit was nothing but advance rent and hence as per provisions of Section 194-I of the Act, the Assessee should have deducted tax at source therefrom and as such he raised a demand of Rs.7,62,674/- under Section 201(IA) of the Act.

5. Aggrieved against the order of the Assessing Officer, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) who allowed the appeal of the Assessee.

6. Being dissatisfied, the Revenue filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as Tribunal). The Tribunal vide impugned order held that the Commissioner of Income Tax (Appeals) was justified in cancelling the levy of interest and as such upheld the order of the Commissioner of Income Tax (Appeals).

7. It has been argued by learned counsel for the Appellant that the amount of Rs.1,50,24,000/- paid by way of security deposit was the advance rent which was agreed to be adjusted every six months on regular basis by the amount of rent which became payable and due in accordance with the terms of the agreement. Since the

deposit made by the Assessee was a non-refundable deposit, it represents the advance consideration for use of land and building and, therefore, was clearly in the nature of rent as defined in Section 194-I of the Act. The definition of 'rent' defined in the Explanation (i) to Section 194-I of the Act, is wide and includes payment by whatever name called and paid under any arrangement for use of land or building and as such there is no justification on the part of the Assessee for not deducting tax at source.

8. On the other hand, it has been argued by learned counsel for the Respondent that Clause 14 of the agreement provides for the refund of unadjusted portion of security deposit paid by the Assessee and as such the tax was not deductable unless the rent has become due to the landlord.

9. Section 194-I of the Act which is relevant for deciding the present controversy, reads as under:-

> " **S.*194-I*. Rent-**
> Any person, not being an individual or a Hindu undivided family, who is responsible for paying to any person any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by

the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of-

(a) fifteen per cent if the payee is an individual or a Hindu undivided family; and

(b) twenty per cent, in other case:

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees.

Explanation-For the purposes of this section,-

(i) 'rent', means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings, and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii) where any income is credited to any account, whether called 'suspense account or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

Clause (i) of the Explanation to Section 194-I coins a definition of the expression 'rent', so as to mean-

-any payment, by whatever name called, under any-

-lease,
-sub-lease,
-tenancy or
-any other agreement or arrangement
for the use of any land or any building (including factory building), together with-
-furniture,
-fittings and
-the land appurtenant thereto,
whether or not such building is owned by the payee.

The definition for the purpose of this Act of the nomenclature rent as expounded in the Explanation column of section 194-I itself, amply reveals that the same is projected as the generic term which includes within the ambit of payment made on whatsoever account for occupation of a tenanted portion. After taking into account the definition of rent, it apparently appears to be a composite concept. Once the rent is comprehended as a composite concept then it is not capable of being fragmented. The moment any attempt will be made to have the germane expression fragmented by splitting up the amount covered by the rent, it will cease to be rent and the same will not satisfy the test of the definition."

10. The relevant clauses of the lease agreement are Nos.3 & 14, which read as under:-

"3.1.The rent for the Premises shall be Rs.6,26,000/-(Rupees six lacs twenty six thousand only) per month for the Term of this lease commencing February 1, 1995. Unless otherwise agreed the rent shall become due and payable every six months in arrears, that is, to say that the first six months' rent (from February 1, to July 31, 1995) will become due and payable on July 31, 1995 and thereafter the rent will

become due and payable every six months.

3.2(a)Simultaneously with the execution of the Agreement REEBOK has paid to ABCO an amount of Rs.1,50,24,000/-(Rupees one crore fifty lacs and twenty four thousand only), subject to mutual agreement referred to in Clause 3(b) shall be applied and adjusted as follows:
as Security Deposit which shall stand reduced every six months when the rent becomes due and payable in accordance with Clause 3.1, by an amount of Rs.25,04,000/- by appropriation of the said amount of Rs.25,04,000/- towards the rent due and payable for six months i.e. Rs.37,56,000. The balance amount i.e., Rs.37,56,000/- less Rs.25,04,000/- being Rs.12,52,000/- shall be paid by REEBOK to ABCO after deduction at source of any applicable taxes on the rent due and payable.

(b) The parties have agreed that they may by mutual agreement adjust and apply, the said amount of Rs.1,50,24,000/- differently. Unless the parties reach such an agreement by March 31, 1995, the provisions of Clause 3.2.(a) shall prevail."

14.Upon termination of the lease, REEBOK shall hand over and put ABCO in vacant possession of the Premises and every part thereof undisputed as provided in Clause 5(v) hereof and REEBOK shall be obliged to refund the unadjusted portion if any of the advance/security deposit paid by REEBOK under Clause 3.2(a). Hereof, failing which ABCO shall be liable to pay interest thereon at the rate of 18% (eighteen percent) per annum from the date REEBOK delivers vacant possession

to ABCO unto and until the date of refund."

11. A bare reading of clause 3.2(a) shows that the sum of Rs.1,50,24,000/- paid by the Assessee to ABCO is in the nature of "advance rent" and not as security deposit as according to this clause "such security deposit shall stand reduced every six months when the rent becomes due and payable."

12. If it had been the security amount, then, firstly, it would have been in the nature of "refundable amount" at the time of the termination of the lease. Secondly, there would have been no reduction in the security amount, after every six months and thirdly, as per clause 14 of the lease agreement, the Assessee is "obliged to refund the unadjusted portion, if any, of advance/security deposit," which means that this amount was adjustable against rent and the same was adjusted also, and thus this amount was in the nature of advance rent.

13. Since, this amount paid by the Assessee was not fully "refundable deposit amount" thus this amount was in fact the advance rent and as per provision of Section 194-I of the Act, the Assessee was required to deduct tax at the

source from the payment of such advance rent at the time of its assessment.

14. Accordingly, we hold that Income Tax Appellate Tribunal was wrong in law in holding that the amount of Rs.1,50,24,000/- (termed as security deposit) paid by the Assessee to its landlord under the Agreement to Lease dated 10th March, 1995 was not 'rent' as defined in the Explanation to Section 194-I of the Act and, accordingly, the appeal filed by the Revenue is accepted.

15. The substantial question of law is answered in the negative, in favour of the Revenue and against the Assessee.

(V. B. GUPTA)
JUDGE

March 12, 2007
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(MADAN B. LOKUR)
JUDGE